

NTSB Order No. EA-4693

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 13th day of August, 1998

Respondent.

Docket SE-14492

Respondent has appealed from the initial decision of Administrative Law Judge Patrick G. Geraghty, issued on September 11, 1997, granting the Administrator's "Motion for Decision" (motion for summary judgment).<sup>1</sup> The law judge affirmed an order of the Administrator, revoking on an emergency basis a restricted category airworthiness certificate that had been

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issued for respondent's Schweizer G-164A agricultural aircraft.<sup>2</sup>  
We deny the appeal.

On March 29, 1995, respondent applied for and was granted an experimental/exhibition certificate in connection with replacement on his Schweizer-Grumman G-164A of its radial piston engine with a turbo-propeller engine manufactured in the Czech Republic. The parties agree that this constituted a major alteration, and that the turbine engine that was installed in the aircraft was not type certificated. The experimental/exhibition certificate expired on June 29, 1995, before which, on June 23, 1995, respondent was able to obtain "field approval" by way of a restricted category airworthiness certificate issued by Reno FAA Inspector James Woods.<sup>3</sup>

On learning of the field approval, the Portland FSDO advised respondent, by letter dated November 14, 1995, that the field approval had been wrongly issued, and that operating the altered aircraft would violate the Federal Aviation Regulations (FARs). Follow-up letters from Mr. Woods, dated December 7, 1995, and February 2, 1996, reiterated that the field approval was being rescinded, and asked for return of the certificate. Respondent declined, and this emergency revocation order followed.

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<sup>2</sup> Respondent waived the time limits for emergency proceedings.

<sup>3</sup> Respondent's earlier attempt to obtain field approval from the Portland Flight Standards District Office (FSDO), which had jurisdiction over respondent's operations, was unsuccessful; he was told that field approval for the change he sought was not available. The Reno FSDO is apparently near respondent's operation, but is in a different FAA region from the Portland  
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The law judge found, as noted above, that the turbine engine is not type certificated in the U.S., that no turbine engine has been certified for installation in this aircraft, and that these non-type certificated engines are not yet permitted to be installed in U.S. type certificated agricultural aircraft. He concluded that the aircraft no longer met its type design and was not eligible for a restricted category airworthiness certificate. In reaching these conclusions, the law judge addressed the issue of Mr. Woods' authority to issue a field approval. He found that Mr. Woods lacked that authority, but went on to state that review of the issuance or rescission of field approval is not within the Board's jurisdiction.

Respondent first argues that the law judge erred in granting summary judgment. Respondent believes that there are outstanding material issues of fact, so as to preclude that relief. We disagree.

The relevant facts here are not disputed -- the engine on the aircraft was changed from a type certificated reciprocating engine and propeller to a non-type certificated turbo-prop engine and propeller. The remaining questions are not of fact but of law. Questions of regulatory interpretation and authority are questions of law, which respondent had ample opportunity to brief.

Mr. Woods' authority to issue field approval -- an issue to which respondent devotes considerable attention -- is, to us, beside the point. Whether we have authority to review the field approval or not (and while we react favorably to the law judge's conclusion we need not reach that issue), the issue before us is whether the certificate that was issued should be revoked. Respondent has not convinced us that the Administrator's showing that the certificate was improperly issued and not authorized under her regulations is in error. The deposition testimony of Mr. Dalla Riva, an FAA engineer who was involved in Mr. Woods' field approval, is not dispositive of FAA policy or regulatory requirements; it simply presents his view, easily trumped by other, more convincing evidence. And, while it may well be that the Civil Air Regulations and Civil Aeronautical Manual were intended to make it easier and less expensive for operators of certain aircraft (including agricultural aircraft) to modify those aircraft, a general policy does not override more specific prohibitions that the Administrator has here shown are contained in those documents and in the FARs.

The aircraft has not been type certificated with the turbine engine respondent installed. That engine is also not type certificated in the U.S. Its characteristics, properties, and operating history are an unknown vis-a-vis Federal safety requirements.<sup>4</sup> The process of field approval does not permit the

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<sup>4</sup> And, according to the un rebutted statement of the Administrator, a change in the engine apparently also requires  
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kind of study of the engine that the FAA has reasonably determined that safety requires.<sup>5</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's appeal is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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changes to the fuel system as well as other engine support systems. It is not entirely clear from the record whether these changes were accomplished.

<sup>5</sup> Revocation of the restricted certificate does not mean that these engines can never be installed on these aircraft, only that they must be subjected to the more rigorous testing and investigation that is undertaken in connection with, for example, issuance of a supplemental type certificate, a new type certificate, or a regulatory waiver.